

04.10.2023
Sl. No.57DL)
srm

C.O. No. 2668 of 2023
Sri Gopal Chandra Dey
Versus
Paschim Banga Khadi Kendra

Mr. Rajdeep Bhattacharya
...for the Petitioner.

Mr. Pranab Mitra
...for the Opposite Party.

The revisional application arises out of an order dated July 19, 2023 passed by the learned Civil Judge (Senior Division), 10th Court, Alipore, South 24-Parganas, in Title Suit No.23 of 2012. A prayer for local inspection was allowed.

Title Suit No.23 of 2012 was filed by the opposite party for declaration, damages and injunction. The plaintiff/opposite party prayed for a declaration that he was a tenant under the petitioner, decree for permanent injunction restraining the defendant/petitioner from evicting the plaintiff/opposite party, a decree for permanent injunction restraining the defendant/petitioner from disturbing the peaceful possession and enjoyment of the plaintiff/opposite party in respect of the shop room in question and for damages.

An order of ad interim injunction was passed. The same was challenged in a misc. appeal before the appropriate

appellate court and the said ad interim injunction was set aside. The opposite party/plaintiff challenged the said order before this Court by filing a revisional application being C.O. No.3075 of 2014. The said revisional application was dismissed by a learned co-ordinate Bench of this Court on the ground that the opposite party could not have straddled both boats. When the opposite party had already filed an application under Order XXI Rule 101 of the Code of Civil Procedure being Misc. Case No.25 of 2012 in the execution proceedings initiated by the petitioner/deGREE-holder against the opposite party, the learned co-ordinate Bench was of the view that the remedy of the petitioner would be in the said proceedings.

Similarly, this Court is of the view that if the opposite party is unable to use the alleged shop room in respect of which it has already suffered a decree of eviction and in respect of which an execution proceeding is pending, the proper remedy of the opposite party would be to approach the learned executing court in Misc. Case No.25 of 2012 arising out of the decree passed in ejectment suit No. 135 of 2006 and pray for local inspection in order to ascertain the exact nature of repair that may be necessary for protection of the property so that fatal accident can be avoided. Unless the condition of a shop room is so dilapidated that it would endanger the life

and safety of the persons employed in the shop and the customers, construction or re-construction or alteration cannot be allowed. The opposite party has already suffered a decree for eviction in ejectment suit No. 135 of 2006 and a decree of declaration that the opposite party did not have any right to alter and renovate the shop room. The opposite party was restrained from making any addition and alternation. Such decree was passed in Title Suit No. 155 of 2003.

If the opposite party approaches the learned executing court in Misc. Case No.25 of 2012 with a prayer for local inspection, the said learned court shall allow the application only on the terms stated hereinabove. The inspection shall be held in the presence of the parties. If the report of the local inspection indicates that the shop room needs immediate care and repair, such order shall be passed and repair may be allowed under strict supervision of the learned Commissioner, who shall be appointed by the learned court below. The cost of repair and the inspection shall be borne by the opposite party

Accordingly, the order impugned is set aside.

However, the decision of the learned court shall be subject to contest and proof before the learned court below.

The revisional application is, thus, disposed of.

There shall be no order as to costs.

Parties are directed to act on the basis of the server copy
of this order.

(Shampa Sarkar, J.)